

AMENDING ACT OF JUNE 27, 1960 (74 STAT. 220), RELATING TO THE PRESERVATION OF HISTORICAL AND ARCHEOLOGICAL DATA

AUGUST 3, 1971.—Ordered to be printed

Mr. Moss, from the Committee on Interior and Insular Affairs, submitted the following

REPORT

[To accompany S. 1245]

The Committee on Interior and Insular Affairs, to which was referred the bill (S. 1245) to amend the act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data, having considered the same, reports favorably thereon with amendments and recommends that the bill (as amended) do pass.

PURPOSE

S. 1245 would amend a 1960 law under which the Secretary of the Interior, through the National Park Service, conducts archeological salvage programs at reservoir construction sites. Under the 1960 law, Federal agencies responsible for dam construction or for issuing licenses for dams are required to notify the Secretary of the Interior before starting construction or issuing the license; and upon receiving such notice, the Secretary is directed to survey the area involved to determine whether historical and archeological data exist and should be preserved. The existing law further directs the Secretary to preserve such data if it exists.

S. 1245 would amend the existing law to broaden the scope of activity to include all Federal or federally assisted or authorized construction projects, such as major airports, roads and public housing projects and other construction which results in alteration of the terrain. The bill would further amend the 1960 Law by authorizing the Secretary to conduct a survey and salvage program upon notification not only by the instigating agency but upon notification by any other

Federal or State agency or responsible private organization or individuals such as qualified professionals from universities, historical and archeological societies and State archeological surveys.

Another major provision of S. 1245 is to authorize construction agencies to use or transfer up to one percent of funds appropriated for a project to the Secretary of the Interior for survey and salvage work.

MEANING OF THE TERM "FEDERALLY LICENSED ACTIVITY"

Existing law provides for certain archeological work to be done in connection with the construction of any dam by a Federal agency or in connection with the issuance of a licence to any private individual or corporation for the construction of a dam. S. 1245 would make certain changes in the arrangements for funding of such work and it would extend the provisions of the law to "any alteration of the terrain caused as a result of any Federal, federally assisted, or federally licensed activity or program." It is the intent of the Committee to preserve the interpretation of "licensed" activities to mean construction works carried out under specific Federal licenses pertaining to the works themselves. The term is not intended to include permits for the use of public lands where significant construction is not involved.

Where non-Federal entities conduct construction work which is subject to this measure, such entities may elect to contract directly with educational institutions or other competent scientific organizations to perform the surveys and recovery work mutually agreed upon by the Secretary and the Federal agency responsible for the license or assistance. The funds in such cases need not be transferred to the Secretary.

NEED

Several instances were brought to the attention of Committee where significant remains were destroyed by Federally-funded projects because there was neither authority nor sufficient time given by the responsible agency, nor sufficient funds to accomplish the work. It appears, therefore that there is a need to provide a more flexible basis for conducting surveys and recovery of data than is afforded by the 1960 Act.

AMENDMENT

The Committee amended the bill to provide that the costs incurred in connection with public works projects for archeological work under this Act would become non-reimbursible project costs. If these costs were allocated among the several project purposes as originally provided in the bill, all of the costs associated with highway construction and a major portion of the costs associated with water resource development would be non-reimbursible. In the case of Federal Reclamation projects, however, a large proportion of the project costs must be returned to the Treasury through payments for water and power. In certain circumstances, a heavy financial burden might be imposed upon a particular project. The Committee believes it would be equitable to make these archeological costs consistently non-reimbursible in all programs.

10: The archeological work which has been accomplished under existing law and which would be accomplished under this Act is chiefly undertaken to prevent irretrievable loss of valuable data and artifacts because of construction activity. The Committee notes, however, that frequently this exploration work would not have been undertaken at all in the absence of any construction proposal. This expanded program, therefore, may be expected to make a significant contribution to scientific knowledge for the benefit of the general public. It is not inappropriate, therefore, for the costs to be borne by the broader public as non-reimbursible project costs.

COSTS

10: While the change in existing law that would be brought about through the enactment of S. 1245 would result in an increase in costs, the actual increase cannot be estimated because there is no way to predict the number of project sites that would have to be surveyed or the extent of recovery measures needed for each site. On a program basis, the National Park Service spends approximately \$1.2 million annually for salvage work on reservoir projects alone under the 1960 law. With the construction activities of other agencies included in the program, it is expected that the amount needed for this program would increase to about \$6.5 million within five years.

COMMITTEE RECOMMENDATIONS

Hearings were held on S. 1245, which has 35 cosponsors from both Parties, by the Parks and Recreation Subcommittee on June 10. Action by the full committee in ordering this measure reported favorably to the Senate was unanimous and enactment of the bill is recommended.

DEPARTMENTAL REPORTS

The reports of the Departments of the Interior, Transportation and the Army and the Office of Management and Budget are set forth in full as follows:

U.S. DEPARTMENT OF THE INTERIOR,

OFFICE OF THE SECRETARY,

Washington, D.C., June 9, 1971.

Hon. HENRY M. JACKSON,

Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.

DEAR MR. CHAIRMAN: This responds to your request for the views of this Department on S. 1245, a bill to amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

We recommend the enactment of S. 1245.

The Act of June 27, 1960 (74 Stat. 220), provides that before any agency of the United States undertakes the construction of a dam, or issues a license for that purpose, it shall give written notice to the Secretary of the Interior. Upon receipt of such notice, the Secretary is directed to survey the affected area and ascertain whether historical and archeological data exist and should be preserved, and if, so, to

collect and preserve such data. The Act authorizes the appropriation of such sums as may be necessary to carry out its purposes.

S. 1245 will amend the 1960 Act by re-enacting its major provisions, but with the following significant changes: (1) broadening the scope of activity that will give rise to a salvage program to include not only dam construction but any Federal, federally assisted, or federally licensed activity; (2) authorizing the Secretary to conduct a survey and salvage program upon notification not only by the instigating agency but upon notification by any other Federal or State agency or responsible private organization or individual; and (3) authorizing the instigating agency to expend program activity funds for recovery and preservation of data or, upon notice by the Secretary, to transfer to him up to one percent of the amount appropriated for the activity in order to enable the Secretary to conduct the survey and salvage required.

The Secretary of the Interior, under the 1960 Act through the National Park Service has spent approximately \$1 million per year on historical and archeological surveys and recovery of data located at proposed Federal or federally licensed dam and reservoir sites.

A major problem in conducting an adequate program of salvage archeology is the great increase in recent years of the number of small construction projects which are injurious to archeological values. Many of these are outgrowths of construction of major dams, and include such activities as landleveling and construction of irrigation systems. Others such as construction of roads and other developments on Indian lands, construction in connection with defense programs and others are also causing a greatly increased need for salvage archeology. Our present program attempts to respond to this need, as exemplified by budgeted items for miscellaneous small reservoirs in the Northeast Region, and landleveling in the Southeast and Midwest Regions. Just as the nature of these projects is different from the construction of major dams, however, the answer to the need for salvage archeology is not apparently best met by the traditional method of advance programming by the Service for individual projects.

For instance, the Soil Conservation Service is conducting activities affecting archeological values in its watershed program carried out under authority of the Watershed Protection and Flood Prevention Act (68 Stat. 666; 16 U.S.C. 1001), as amended. This Act authorizes Federal assistance to qualified local organizations to conserve and improve water and related resources in watersheds not exceeding 250,000 acres in size. By January 1968, 827 projects had been authorized. The projects are for the most part small, and involve Federal assistance to local organizations. Communication is difficult because of the quantity of small projects and minimal leadtime, thereby making advance salvage funding unsatisfactory. If the Soil Conservation Service were authorized to provide on an actual need basis at the time of construction, salvage activities could be directly responsive to the need for salvage caused by the current construction program.

Following are several instances from the Southwest Region where significant remains were destroyed by federally funded, sponsored

or licensed projects because there was neither authority nor sufficient leadtime given by the responsible agency, nor sufficient funds to accomplish the work on an emergency basis:

1. Phreatophyte clearing and related construction along the Gila River by the united efforts of the Bureau of Indian Affairs, Geological Survey, and the San Carlos Apache Tribe.

2. Construction of the Southwest International Airport, Fort Worth, Texas. Any archeological remains in this area are significant, and because of the immense land area involved, there was undoubtedly some loss. Paleontological remains were salvaged by the Shuler Museum, SMU, through emergency funds provided by our Southwest Archeological Center.

3. Construction of roads and other features at Fort Bliss (and doubtless other military installations) has destroyed known sites of archeological significance.

4. Public Health Service—Bureau of Indian Affairs—White Mountain Apache Tribe housing project at Cedar Creek, Arizona. In this instance much of a large pueblo site was destroyed before salvage action could begin.

It appears, therefore, that there is a need to provide a more flexible basis for conducting surveys and recovery of data than is afforded by the notice procedures, applicable only to dam and reservoir construction, of the 1960 Act. By (1) broadening the Federal activity subject to survey, (2) allowing the Secretary to act on information furnished by other public and private agencies, and (3) permitting the instigating agency to transfer funds, up to one percent of the total appropriated, on the basis of need, we believe S. 1245 will greatly assist in our ability to recover significant historical and archeological data.

If the contemplated program is to be effective, the funds required for the protective activities should be available in advance of any construction activities. Generally speaking, appropriations for a project are spread out over a period of years. We intend, to the extent possible, to request appropriation of the full amount authorized for the recovery, protection, and preservation of the data prior to initiation of the project. To the extent that other agencies may ask this Department to recover and preserve the data, we would expect them to request the full amount authorized in their appropriations so that the funds may be transferred promptly.

Of course, under the terms of S. 1245, project construction agencies may prefer to undertake salvage work themselves, without transferring funds to this Department. For example, agencies of the Department of Agriculture might choose this course. We would hope, however, that in so doing, other such agencies would program salvage funds well in advance of construction activities.

The Office of Management and Budget has advised that there is no objection to the presentation of this report from the standpoint of the Administration's program.

Sincerely yours,

NATHANIEL RAND,
Assistant Secretary of the Interior.

DEPARTMENT OF THE ARMY,
Washington, D.C., June 17, 1971.

HON. HENRY M. JACKSON,
Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of the Secretary of Defense on S. 1245, 92d Congress, a bill "To amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data." The Department of the Army has been assigned responsibility for reporting on this bill.

The Act of June 27, 1960 (74 Stat. 220), which the bill would amend, provides for the salvage of historical and archeological remains being flooded or destroyed by dams constructed or licensed by the Federal Government. It requires that, before any agency of the United States undertakes or issues a license for the construction of a dam, it must give written notice to the Secretary of the Interior setting forth the site of the proposed dam and the approximate area to be flooded. The Secretary of the Interior is directed to conduct a survey of the area to be flooded to ascertain whether the area contains historical and archeological data which should be preserved, and if so, to perform work to collect and preserve the data. The Act provides for similar surveys and work in connection with any dam authorized prior to the date of enactment.

The bill would amend the Act by extending its coverage to all Federal, federally assisted, or federally licensed projects, activities and programs, and would authorize the agency involved to either expend its funds to recover and preserve archeological data or transfer funds to the Secretary of the Interior for this purpose. The funds authorized to be transferred could not exceed one percentum of the total amount appropriated in connection with the agency's project, activity or program. The bill would also require that the agency involved notify the Secretary of the Interior upon learning that its existing or proposed project, activity or program affects, or may affect, adversely any significant scientific, prehistoric, historical or archeological data. The agency may then undertake the recovery and preservation of such data on its own or may request that the Secretary undertake the recovery and transfer funds to the Secretary up to one percentum of the total amount appropriated for the agency's project, activity or program. The bill would further authorize the Secretary to initiate a survey or investigation when the possible presence of such data is brought to his attention, and to recover and preserve that data if the responsible agency, after notice from the Secretary, does not take steps to so preserve such data in the public interest.

With regard to the bill's application to federally licensed projects, programs, and activities, we interpret it as not applying to the permit authority of the Department of the Army. Under the act of March 3, 1899 (33 U.S.C. 401 et seq.), any dredging, filling, dumping, discharging, or erection of structures in navigable waters of the United States is prohibited unless authorized by the Secretary of the Army. No license, in the usual sense, is involved, but only a revocable permit. If this permit activity is intended to be covered by the bill, we feel that

the permittee, and not this Department, should properly bear the cost of recovering and preserving archeological data as part of the cost of being allowed to perform work in the navigable waters of the United States.

Subject to the preceding comment, the Department of the Army has no objection to enactment of S. 1245.

The Office of Management and Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

STANLEY R. RESOR,
Secretary of the Army.

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., June 16, 1971.

HON. HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs, U.S. Senate,
Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request for this Department's views on S. 1245, a bill to amend the Act of June 27, 1960 (74 Stat. 220), relating to the preservation of historical and archeological data.

The Department of Transportation endorses the purposes and objectives of S. 1245. Indeed, our Federal Highway Administration now maintains a program of archeological and paleontological salvage as authorized by 23 U.S.C. 305. Under this program, when a projected highway will pass through an area which may contain historical objects, the appropriate Federal or State authority can be advised of the proposed location of the highway so as to enable such authority to determine the likelihood of the highway construction destroying historical objects. Even when objects are not discovered until construction has begun, construction can be halted, appropriate authorities notified, and steps taken to excavate and preserve the objects. If preservation is not practicable, data concerning the objects can be recorded. Archeological surveys are considered part of the costs for the projects and are eligible for Federal-aid reimbursement. Similarly, the cost of excavation or recordation of data is eligible for Federal-aid participation.

As we understand S. 1245, an agency could use project funds for its own efforts in the recovery, protection, and preservation of data, or it shall notify the Secretary of the Interior and transfer to him, except in specified instances, not to exceed 1 per centum of project funds so that he may conduct such activities. We note this authority is permissive and would not require that Federal-aid highway funds or the funds of any other program administered by this Department be transferred to the Secretary of the Interior for this purpose.

The Office of Management and Budget states that there is no objection to the submission of this report to the Committee.

Sincerely,

J. THOMAS TIDD,
Acting General Counsel.

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., June 11, 1971.

HON: HENRY M. JACKSON,
*Chairman, Committee on Interior and Insular Affairs,
U.S. Senate, Washington, D.C.*

DEAR MR. CHAIRMAN: This is in response to your request of April 14, 1971 for the views of the Office of Management and Budget on S. 1245, a bill to amend the act of June 27, 1970 (74 Stat. 220), relating to the preservation of historical and archeological data.

The Departments of the Interior and of the Defense have submitted separate reports explaining the purposes and effects of S. 1245. In their reports, both Departments recommend enactment of this bill.

You are advised that the Office of Management and Budget would have no objection to the enactment of S. 1245.

Sincerely,

C. WILLIAM FISCHER,
*Acting Assistant Director
for Legislative Reference.*

CHANGES IN EXISTING LAW

In compliance with subsection (4) of Rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill, S. 1245, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in *italic*, existing law in which no change is proposed is shown in roman):

ACT OF JUNE 27, 1960 (74 STAT. 220)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, [That it is the purpose of this Act to further the policy set forth in the Act entitled "An Act to provide for the preservation of historic American sites, buildings, objects, and antiquities of national significance, and for other purposes", approved August 21, 1935 (16 U.S.C. 461-467), by specifically providing for the preservation of historical and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States or by any private person or corporation holding a license issued by any such agency.

SEC. 2. (a) Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam, it shall give written notice to the Secretary of the Interior setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: *Provided*, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other

type of dam which creates a reservoir of less than forty surface acres of provisions of this section shall apply only when the constructing agency, in its preliminary surveys, finds, or is presented with evidence that historical or archeological materials exist or may be present in the proposed reservoir area.

(b) Upon receipt of any notice, as provided in subsection (a), the Secretary of the Interior (hereinafter referred to as the "secretary"), shall cause a survey to be made of the area proposed to be flooded to ascertain whether such area contains historical and archeological data (including relics and specimens) which should be preserved in the public interest. Any such survey shall be conducted as expeditiously as possible. If, as a result of any such survey, the Secretary shall determine (1) that such data exists in such area, (2) that such data has exceptional historical or archeological significance, and should be collected and preserved in the public interest, and (3) that it is feasible to collect and preserve such data, he shall cause the necessary work to be performed in such area to collect and preserve such data. All such work shall be performed as expeditiously as possible.

(c) The Secretary shall keep the instigating agency notified at all times of the progress of any survey made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency.

(d) A survey similar to that provided for by section (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam the construction of which has been heretofore authorized by any agency of the United States, or by any private person or corporation holding a license issued by any such agency.

(e) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organization, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

Sec. 3. In the administration of this Act, the Secretary may—

(1) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, association, or qualified individual; and

(2) procure the temporary or intermittent services of experts or consultants or organizations thereof as provided in section 15 of the Act of August 2, 1946, (5 U.S.C. 55a); and

(3) accept and utilize funds made available for salvage archeological purposes by any private person or corporations holding a license issued by an agency of the United States for the construction of a dam or other type of water or power control project.

Sec. 4. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act.]

That it is the purpose of this Act to further the policy set forth in the Act entitled 'An Act to provide for the preservation of historic

American sites, buildings, objects, and antiquities of national significance, and for other purposes,' approved August 21, 1935. (16 U.S.C. 461-467), and the Act entitled 'An Act to establish a program for the preservation of additional historic properties throughout the Nation, and for other purposes,' approved October 15, 1966 (80 Stat. 915), by specifically providing for the preservation of scientific, prehistorical, and archeological data (including relics and specimens) which might otherwise be irreparably lost or destroyed as the result of: (1) flooding, the building of access roads, the erection of workmen's communities, the relocation of railroads and highways, and other alterations of the terrain caused by the construction of a dam by any agency of the United States; or by any private person or corporation holding a license issued by any such agency; or (2) any alteration of the terrain caused as a result of any Federal, federally assisted, or federally licensed activity or program.

"SEC. 2. Before any agency of the United States shall undertake the construction of a dam, or issue a license to any private individual or corporation for the construction of a dam it shall give written notice to the Secretary of the Interior (hereinafter referred to as the 'Secretary') setting forth the site of the proposed dam and the approximate area to be flooded and otherwise changed if such construction is undertaken: Provided, That with respect to any floodwater retarding dam which provides less than five thousand acre-feet of detention capacity and with respect to any other type of dam which creates a reservoir of less than forty surface acres the provisions of this section shall apply only when the construction agency, in its preliminary surveys, finds, or is presented with evidence that scientific, prehistorical, historical, or archeological data exist or may be present in the proposed reservoir area.

"SEC. 3. (a) Whenever any Federal agency finds, or is made aware by an appropriate historical or archeological authority, that its operation in connection with any Federal, federally assisted, or federally licensed project, activity, or program adversely affects or may adversely affect significant scientific, prehistorical, historical, or archeological data, such agency shall notify the Secretary, in writing, and shall provide the Secretary with appropriate information concerning the project, program, or activity. Such agency (1) may request the Secretary to undertake the recovery, protection, and preservation of such data (including preliminary survey, or other investigation as needed, and analysis and publication of the reports resulting from such investigation), or (2) may, with funds appropriated for such project, program, or activity, undertake the activities referred to in clause (1). Copies of reports of any investigations made pursuant to clause (2) shall be made available to the Secretary.

"(b) The Secretary, upon notification by any such agency or by any other Federal or State agency or appropriate historical or archeological authority that scientific, prehistorical, historical, or archeological data is or may be adversely affected by any Federal, federally assisted, or federally licensed project, activity, or program, shall, if he determines that such data is being or may be adversely affected, and after reasonable notice to the agency responsible for such project, activity, or program, conduct or cause to be conducted a survey and other in-

investigation of the areas which are or may be affected and recover and preserve such data (including analysis and publication) which, in his opinion are not being but should be recovered and preserved in the public interest. The Secretary shall initiate action within sixty days of notification to him by an agency pursuant to subsection (a), and within such time as may be agreed upon with the head of the responsible agency in all other cases. The responsible agency upon request of the Secretary is hereby authorized to assist the Secretary and to transfer to the Secretary such funds as may be necessary, in an amount not to exceed one per centum of the total amount appropriated for such project, activity, or program, to enable the Secretary to conduct such survey or other investigation and recover and preserve such data (including analysis and publication) or, in the case of small projects which cause extensive scientific, prehistorical, historical, or archeological damage, such larger amount as may be mutually agreed upon by the Secretary and the responsible Federal agency as being necessary to effect adequate protection and recovery: Provided, That the costs of such survey, recovery, analysis, and publication shall be considered nonreimbursable project costs.

"(c) The Secretary shall keep the responsible agency notified at all times of the progress of any survey or other investigation made under this Act, or of any work undertaken as a result of such survey, in order that there will be as little disruption or delay as possible in the carrying out of the functions of such agency.

"(d) A survey or other investigation similar to that provided for by subsection (b) of this section and the work required to be performed as a result thereof shall so far as practicable also be undertaken in connection with any dam, project, activity, or program which has been heretofore authorized by any agency of the United States, by any private person or corporation holding a license issued by any such agency, or by Federal law.

"(e) The Secretary shall consult with any interested Federal and State agencies, educational and scientific organizations, and private institutions and qualified individuals, with a view to determining the ownership of and the most appropriate repository for any relics and specimens recovered as a result of any work performed as provided for in this section.

"SEC. 4. In the administration of this Act, the Secretary may—

(1) accept and utilize funds transferred to him by any Federal agency pursuant to this Act;

(2) enter into contracts or make cooperative agreements with any Federal or State agency, any educational or scientific organization, or any institution, corporation, associations, or qualified individual;

(3) obtain the services of experts and consultants or organizations thereof in accordance with section 3109 of title 5, United States Code; and

(4) accept and utilize funds made available for salvage archeological purposes by any private person or corporation.

"SEC. 5. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this Act."